ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
SARAH J. HEFFLEY, JUDGE

DIVISION II

CA 07-300

January 30, 2008

LAWRENCE ELLIS APPELLANT	APPEAL FROM THE HOT SPRING COUNTY CIRCUIT COURT [NO. E-78-177-1]
V.	HONORABLE CHRIS E WILLIAMS, JUDGE
WANDA ELLIS (NOW WILLIAMS) APPELLEE	AFFIRMED

Lawrence Ellis, appellant, appeals from an order enforcing a provision in a property-settlement agreement obligating him to maintain life insurance on behalf of the parties' children. Appellant contends that the trial court lacked subject-matter jurisdiction to enforce this provision. We disagree and affirm.

The parties to this case were divorced in December 1978. They entered into a property-settlement agreement that was incorporated into the decree of divorce. Appellee Wanda Ellis, now Williams, took custody of their two minor children, both daughters, who were then ages fifteen and nine. Appellant was to pay $250 a month in child support. Paragraph nine of the agreement provided:

> Life Insurance. All life insurance policies on the life of the husband in existence at the time of the separation shall be kept in existence by the husband and the children of the parties shall be the beneficiaries thereof, share and share alike.

In October 2006 appellee filed a motion for contempt alleging that appellant had breached their agreement by cashing in the insurance policies. At the hearing held on November 21, 2006, the parties stipulated that there had been six life insurance policies in existence at the time of the divorce that had cumulative face values of $32,051. Appellant had liquidated the policies in June 1985, prior to the younger child's eighteenth birthday. At the time of the hearing, the parties' children were thirty-seven and forty-three years old.

Appellant argued that the obligation to provide insurance was intended as a mechanism to insure the payment of child support should he have died before the children reached the age of majority. The trial court disagreed with appellant's interpretation, ruling that there was nothing in the plain language of the provision tying the pledge to maintain life insurance to the payment of child support, or limiting the duration of the obligation to maintain insurance. The trial court thus held appellant in contempt for cashing in the policies and directed him to supply a policy or policies to replace those that had been canceled.

Appellant argues for the first time on appeal that the trial court lacked subject-matter jurisdiction to enforce the provision in the agreement requiring maintenance of life insurance. Appellant reasons that subject-matter jurisdiction was lacking because the provision was in the nature of child support and that, therefore, his obligation ceased when

the children came of age and that the trial court did not have the authority to require him to pay support past their ages of majority. Appellant further contends that any claim under the provision is now barred by the statute of limitations.

Subject-matter jurisdiction is the power to hear and determine the subject matter in controversy between the parties to the suit. *Rogers v. Rogers,* 80 Ark. App. 430, 97 S.W.3d 429 (2003). Jurisdiction of the subject matter is power lawfully conferred on a court to adjudge matters concerning the general question in controversy. *Young v. Smith* 331 Ark. 525, 964 S.W.2d 784 (1998) (*quoting Banning v. State,* 22 Ark. App. 144, 149, 737 S.W.2d 167, 170 (1987)). Subject-matter jurisdiction does not depend on a correct exercise of that power in any particular case. *Banning v. State, supra.* Although appellant did not raise the issue of subject-matter jurisdiction below, we nevertheless address it because the lack of subject-matter jurisdiction is a defense that may be raised at any time by either a party or the court. *Young v. Smith, supra.*

Appellant's claim that the trial court was without subject-matter jurisdiction hinges on his assertion that the life-insurance provision was a form of child support. He contends that payment of an insurance premium is like paying a sum of money for child support. Appellant fails to persuade. The language of the provision does not link this obligation to the payment of child support, nor is there any evidence in this record that it was intended to provide a means for the support of the children in the event of his death during the children's minority. Independent property-settlement agreements remain subject to judicial interpretation. *Pittman v. Pittman,* 84 Ark. App. 293, 139 S.W.3d 134 (2003). We do not

reverse the trial court's decision unless it is clearly erroneous. *Martin v. Scharbor,* 95 Ark. App. 52, 233 S.W.3d 689 (2006). We cannot say that the trial court's interpretation of the decree is clearly erroneous. *See, e.g., id.* (holding that appellant failed in his burden to show that agreed-upon requirement to provide school clothes, school-related expenses, medical and dental bills not covered by insurance was included within his separate child-support obligation).

Moreover, the underlying cause of action here was one for divorce. Arkansas Code Annotated section 9-12-313 (Repl. 2002) grants trial courts the authority to enforce written agreements between husbands and wives in contemplation of divorce. Thus, we cannot conclude that the trial court did not have subject-matter jurisdiction to compel performance of the terms of the property-settlement agreement. We express no opinion on the issue of whether the statute of limitations had expired. Unlike the question of subject-matter jurisdiction, we do not address statute-of-limitations issues for the first time on appeal. *Jones v. Ragland,* 293 Ark. 320, 737 S.W.2d 641 (1987); *Hooper v. Ragar,* 289 Ark. 152, 711 S.W.2d 148 (1986).

Affirmed.

HART and MILLER, JJ., agree.